CF0000062908

(2)

IN THE HIGH COURT OF JUDICATURE OF M.P. AT JABALPUR .Division Bench (crim.

CRIMINAL APPEAL NO. 936 OF 2000 .

(538)

APPELLANT ..... Podyami Sukada . S/O - Hunga Muriya .
(in jail) aged about 25 years .
R/O - Vill - Tahakwada, Schoolpara .
Distt - Dantewada . P/S - Tongral . (M.P)

Filed on 7/11/12 by Shri P Sharma Advocate

Versus

RESPONDENT ..... The State of M.P.

CRIMINAL APPEAL UNDER SECTION 374(2) OF CRIMINAL PROCEDURE CODE 1973 .

CONVICTION SENTENCE

(24)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.936/..... **सन् 2000**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. Hon'ble Shri L.C.Bhadoo,
Hon'ble Shri Dilip R. Deshmukh, JJ.

22.06.2005

Shri Rakesh Jain for the accused appellant.

Shri Ashish Shukla, G.A. and Shri Akhil Mishra, P.L. for the State.

Counsel for the parties submitted that instead of deciding these applications (M.Cr.P.No.2986/2004 and 68/2002), the appeal may itself be heard finally.

Accordingly, arguments are heard on merits.

Oral order.

1. The accused appellant has preferred this criminal appeal being aggrieved by the judgment of conviction and sentence dated 18th February 2000 passed by the learned First Additional Sessions Judge, Jagdalpur, Bastar in Sessions Trial No.45/2000 whereby the learned Additional Sessions judge after holding the accused appellant guilty for the murder of his mother Madvi Mase sentenced him to undergo imprisonment for life.

2. Briefly stated the prosecution case is that on 9.12.1999 Madvi Pali went to the hose of Madvi Mase to borrow the money.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

However, on reaching the house of Madvi Mase, she saw Madvi Masay was lying dead. She immediately informed Madvi Rama about the incident and on receiving this information, he went to the house of Madvi Mase and saw that Madvi Masay was lying dead and there were wounds at separate places on the body. He immediately convened Panchayat and enquiries were made from the accused Podiami Sukda. Then he disclosed that in the night of 8.12.99 his mother Madvi Mase scolded him and said that he is wandering after consuming the liquor which enraged the accused appellant and picked up the burning stick of teak wooden plank (Khotla) and attacked Masay with that and murdered her. After this, Madvi Rama lodged the report vide Ex.P.1 at Police Station Tongpal.

3. On receiving this report, the police registered the case under the offence punishable under Section 302 I.P.C. and the police officer took up the investigation. He gave notice Ex.P.9 to the Panchas and prepared the Panchnama of the body vide Ex.P.2 and sent the dead body of the Madvi Mase to Primary Health Centre, Tongpal for post-mortem vide Ex.P.11 where Dr. L. L. Dhangar conducted the post-mortem and

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prepared the report (Ex.P.7) in which he mentioned that the cause of death is due to shock on account of extensive burn wound on the different places of the body. He opined that the mode of death is homicidal. The S.H.O. Investigating Officer also prepared site plan (Ex.P.12). Thereafter, he arrested the accused appellant Podyami Sukda and on enquiry he gave memorandum vide Ex.P.4 regarding the weapon of offence i.e. teak wood plank and got it recovered under Ex.P.5. Thereafter, the investigating officer vide Ex.P.8-A sought the opinion of the Doctor as to whether the injury received by Madvi Mase can be caused by that object and Doctor replied that the injury which found on the body of Madvi Mase could be caused.

4. After completion of the investigation, the charge sheet was filed against the accused appellant in the Court of Judicial Magistrate First Class, Sukma who inturn committed the case to the Court of Sessions Judge, Jagdalpur for trial from where the learned Additional Sessions Judge after hearing the public prosecution and the counsel for the accused and on perusal of the record was of the opinion that prima facie offence under Section 302 was made out against accused appellant.

SP/FS/2005 - 20,000

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Accordingly, he framed the charge against the accused appellant who in turn denied the charge and claimed to be tried.

5. In order to prove the offence against the accused appellant, the prosecution examined in all six witnesses. The learned Additional Sessions Judge also recorded statement of accused under Section 313 Cr.P.C. in which the accused appellant denied his involvement in the crime and stated that the witnesses are false and he is innocent and has been falsely implicated in the crime.

6. Learned Additional Sessions Judge after hearing the arguments of Additional Public Prosecutor and the counsel for the accused appellant, convicted and sentenced the accused in the manner mentioned in the previous part of this judgment.

7. We have heard the learned counsel for the accused appellant and the State.

8. As far as the nature of the death of Madvi Mase being concerned as homicidal, the same has not been disputed by the counsel for the accused appellant. Dr. P.W.5. L.L.Dhangar has stated that on 10.12.1999 he was working as Surgeon in the Primary Health Centre, Tongpal. On that day he conducted the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -5-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

post-mortem on the body of Madvi Mase and he noticed as many as 13 burn injuries on various parts of the body. In his opinion, all the injuries were ante mortem in nature and there were in all 60% burn injuries on the body of Madvi Mase. The cause of death was due to extensive burn injuries as a result of shock. He prepared the report vide Ex.P.7. Therefore, in view of the above evidence of Doctor it stands proved that the nature of death of Madvi Mase was homicidal.

9. Now coming to the involvement of the accused in committing heinous crime, the learned counsel for the accused appellant argued that the conviction is mainly based on extra judicial confession before the prosecution witnesses as also the recovery of the teak wood plank (Khotla) at the instance of the accused, which was used as a weapon of offence. He submitted that as far as the extra judicial is concerned, all the four witnesses have turned hostile, therefore, their testimony cannot be considered trustworthy and cannot be relied for holding the accused guilty for the heinous crime. He also submitted that as far as recoveries are concerned, P.W.4 has turned hostile and

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -6-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

when the extra judicial confession cannot be believed, therefore, this recovery becomes meaningless.

10. On the other hand, learned counsel for the State Shri Akhil Mishra argued that it is true that these witnesses before whom the accused appellant made extra judicial confession initially turned hostile but on cross-examination by the public prosecutor they have supported the prosecution case and stated that the accused admitted before the Panchayat that he has committed heinous crime, therefore, this testimony cannot be thrown away altogether and conviction can be based on such testimony, of course, it should be corroborated by some material.

11. Now coming to the question whether the prosecution has been able to establish the charge against the accused appellant based on the extra judicial confession made before the witnesses. Before placing reliance on the extra judicial confession in order to base the conviction of the accused, the first and foremost requirement is that the Court must try to ascertain that whether the extra judicial confession made was true and voluntary and was not obtained by the coercion, inducement or favour as has been held by the Apex Court in the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

matter of Gura Singh vs. State of Rajasthan, **(2001) 2 SCC 205**. It has been further held that such voluntary can be made on sole basis of conviction and corroboration is required only by way of abundant caution. Even retraction of such confession would not, by itself, weaken the prosecution case. In the case of Maghar Singh Vs. State of Punjab, **1975 Cr.L.J. 1102.** It has been held in that case that the evidence furnished by the extra-judicial confession made by the accused to witnesses cannot be termed to be a tainted evidence and if corroboration is required it is only for the witnesses before whom the accused made extra judicial confession, the Court can also look into the circumstances in which the accused made the extra-judicial confession and the person to whom he made extra-judicial confession.

12. In the light of above law on extra-judicial confession, if we scrutinize evidence of the prosecution adduced in this case, P.W.1 Madvi Rama is the uncle of the accused and brother-in-law of the deceased Madvi Mase, who also reported the matter to the police by way of Ex.P.1 at the Police Station. In examination-in-chief, he has not supported the prosecution

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —8—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	regarding extra judicial confession made by the accused before him and stated that in the Panchayat Podiami Sukda had stated nothing. But from his examination-in-chief it is proved that panchayat was convened and in the cross-examination by the public prosecutor after seeking permission from the Court, he has stated that the accused stated before the Panchayat that the deceased Madvi Mase scolded him saying that he is wandering after consuming wine and quarreling. On this, he was enraged and picked up the burning teak wood plank (Khotla) and assaulted Madvi Mase with the same and he further admitted that Ex.P.1. was lodged by him. Again in the cross-examination by the counsel for the accused stated that the accused had not disclosed that how Mase died, Thereafter again he stated that the accused disclosed that the Madvi Mase scolded him that he is wandering after consuming liquor and on this he picked up the teak wood plank (Khotla) and assaulted. Again he stated that it is incorrect to say that villagers told him that the accused has committed the murder of Madvi Mase and this witness again stated when the enquiries were made from the accused in the panchayat, then he admitted that the	

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

accused confessed that he assaulted Madvi Mase with the wooden plank made of teak. P.W.2 Mangdu who was the Sarpanch of the village at that relevant time convened the Panchayat. In examination-in-chief he has stated that the accused did not disclose anything before the Panchayat regarding death of Mase. This witness has turned hostile and he has not supported the prosecution case regarding extra judicial confession made by the accused before him in the Panchayat. However, P.W.3 Aaita in the examination-in-chief has stated that the Panchayat was convened and in the Panchayat, the accused has not disclosed that how his mother died. Thereafter, this witness was declared hostile. Public prosecutor was allowed to cross-examination where he stated that Panchayat was convened and in that the Sarpanch Mangdu called the accused in the Panchayat and before the Panchayat on enquiry made by Sarpanch Mangdu Podiyami Sukda-accused appellant made extra-judicial confession that his mother used to quarrel with him saying that you are wandering after consuming liquor. On that he picked up a teak wood plank and assaulted by way of that object and murdered her

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —10—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

and he further stated that he saw the body of the deceased Mase. In paragraph 4 of the cross-examination made by the counsel for the accused, he stated that on enquiry accused said that he does not know how his mother has died and in the Panchayat he has not stated that he attacked his mother with Khotla. P.W.4 has also not supported the prosecution story regarding extra judicial confession made by the accused before the Panchayat. P.W.1 and P.W.3 have initially stated that the accused has not disclosed anything about the death caused by him but in the cross-examination both the witnesses have stated that before the Panchayat accused made extra-judicial confession that he attacked his mother with the wooden plank on telling to him by her that he has is wandering after consuming liquor.

13. If we look into the above evidence of extra-judicial confession the same cannot be made sole basis of conviction with corroboration. However, the fact that the accused made extra judicial confession before the Panchayat in presence of these witnesses is also mentioned in F.I.R. Ex.P.1 which was immediately given by the P.W.1 before the S.H.O. in which he

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -11-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

has specifically made a mention that Panchayat was convened and in the Panchayat the accused made extra judicial confession recording assault made by him on his mother and committed murder and this report has been proved by the S.H.O. K.L.Naik. There is nothing in the cross-examination of these witnesses that the above said extra judicial confession was made by the accused under any coercion, inducement or favour. In order to seek corroboration by other material as has been mentioned above that P.W.1 immediately made the report before the Police Station in which the fact of extra judicial confession has been mentioned. Apart from that, P.W.6 K.L.Naik, S.H.O. and investigating officer has categorically stated that he arrested the accused on 10.12.1999 and during the investigation, the accused gave information Ex.P.4 regarding the wooden plank (Khotla) and in pursuance thereof he got recovered the wodden plank from his kitchen garden and that was taken into possession by the investigating officer vide Ex.P.5 and Dr. S.L.Dhangar P.W.5 has stated that the injuries which were found on the body of the deceased could be caused by the said wooden plank.

-12-

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -12-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	14. It is true that P.W.4 has admitted in paragraph 3 of his evidence that enquiry made by the police from the accused, accused had not disclosed anything. The memorandum Ex.P.4 bears his signature but thereafter he has stated that the police took into the possession of teak wood plank under Ex.P.5 on production of the accused. Therefore, on this evidence and in the cross-examination of P.W.6 K.L.Naik S.H.O. nothing has come on record that the above said recovery was false, therefore, there is no reason before the Court to disbelieve the said recovery and Doctor has already stated that the injuries which were found on the body of the deceased could be caused by the said wooden plank. On perusal of the Ex.P.5, it is evident that the wooden plank was in burnt condition and it was 33" in length and 10" in width as such this aspect of the recovery of weapon and the evidence of the Doctor and burn injuries which were found on the body of the Madvi Mase, corroborates the extra-judicial confession made by the accused before the Panchayat as per evidence of P.W.1 Madvi Rama and P.W. 3 Aaita. -13-	

(3C)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -13-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15. In view of the above, we are of the considered opinion that extra-judicial confession regarding causing death of his mother attacking her with the teak wood plank was made by the accused before the Panchayat, this evidence of extra-judicial confession by accused before these witnesses inspire confidence of the Court as the same stands corroborated by F.I.R. Ex.P.1. Recovery of weapon of offence as well as medical evidence also corroborates the confession. Therefore, the finding of the trial Court convicting the accused for the offence under Section 302 is based on the legal evidence and we do not find any circumstance to differ from the view taken by the trial Court.

16. In the result, we are of the opinion that there is no substance in this appeal and the same is liable to be dismissed and it is dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani

SP/FS/2005 - 20,000

30.6.07 15.7.07